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Via web: http://www.arb.ca.gov/lispub/comm/bclist.php

RE: Comments on Cap and Trade Program – 2nd Proposed 15-Day Modifications

Shell Energy North America (US), L.P. ("Shell Energy") appreciates this opportunity to provide comments on the proposed cap and trade regulation. Shell Energy is an integral part of the Shell Trading network of companies, and a wholly owned subsidiary of Royal Dutch Shell ("Shell"). Shell Energy supports policies that both meet the energy challenge and address climate change in a manner that promotes California's economy. We also support policies that are market based, that subject similar industries to the same standards, and provide a predictable long-term policy framework. We are committed to working with ARB to develop a workable cap and trade program.

We sincerely appreciate the time and resources that ARB has put into developing this draft cap and trade regulation. Despite the progress that has been made, however, there are issues that must be resolved prior to the implementation of the cap and trade program as outlined below.

Holding limits must be adequate to meet compliance obligations

ARB's regulations still impose a "one size fits all" holding limit, regardless of an entity's compliance obligation. ARB reasons that large entities can hold the necessary allowances for compliance by placing allowances into their compliance account. However, once there, entities are precluded from later selling these allowances, which may be required to manage the price exposure associated with a fluctuating carbon price.

Restricting the number of allowances an entity can *freely* hold to less than an entity's annual compliance obligation is fundamentally discriminatory against entities with large compliance obligations, and does not create a level playing field between market participants. In addition, such a policy will exacerbate potential hoarding, as many entities that may want to sell their bank of allowances will be prevented from doing so. This will artificially drive up the cost of compliance.

Recommendation - Allow holding limits up to compliance obligation levels for covered entities.

Allowances should be granted to entities with no ability to pass through costs; changes creating new disadvantaged parties should be rejected

In the December Board Resolution approving the cap and trade program, the Modified Regulation Order does not adequately address the issues associated with carbon cost recovery by entities obligated under long-term contracts. As noted in comments and in CARB stakeholder processes, renegotiation is not possible in situations where one party is disadvantaged. There is no incentive for the advantaged party to negotiate. CARB should provide free allowances to those limited number of entities that entered long-term contracts that have no ability to pass through the cost of carbon.

The recently released modifications further exacerbate the issue by creating a new disadvantaged party. The changed definition of electricity importer provides that "For facilities physically located outside the state of California with the first point of interconnection to a California balancing authority's transmission and distribution system, the importer is the facility operator or scheduling coordinator." This definition disregards the role of a scheduling coordinator ("SC") and imposes an obligation where none exists.

A SC simply provides a communication service between the facility operator and the California Independent System Operator. It has a contract to perform scheduling and settlement services and is merely a conduit of dollars between the generator and the ISO; the SC does not have a mechanism to recover carbon costs. Only the facility operator should be considered the sole importer for out-of-state facilities that are directly connected to a California balancing area authority. The facility operator performs under an ISO participating generator agreement, and is an ISO dispatchable resource; it should be treated no differently than any other in-state resource.

Recommendation - Modify the definition as follows:

(87) "Electricity importers" are marketers and retail providers that deliver imported electricity. For electricity delivered between balancing authority areas, the electricity importer is identified on the NERC E-tag as the purchasing-selling entity (PSE) on the last segment of the tag's physical path, with the point of receipt located outside the state of California and the point of delivery located inside the state of California. For facilities physically located outside the state of California with the first point of interconnection to a California balancing authority's transmission and distribution system, the importer is the facility operator ~~or scheduling coordinator~~. Federal and state agencies are subject to the regulatory authority of ARB under this article, and include Western Area Power Administration (WAPA), Bonneville Power Administration (BPA) and California Department of Water Resources (DWR).

Thank you for this opportunity to comment on the proposed cap and trade regulations. If there are any questions, please don't hesitate to contact me.

Sincerely,

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